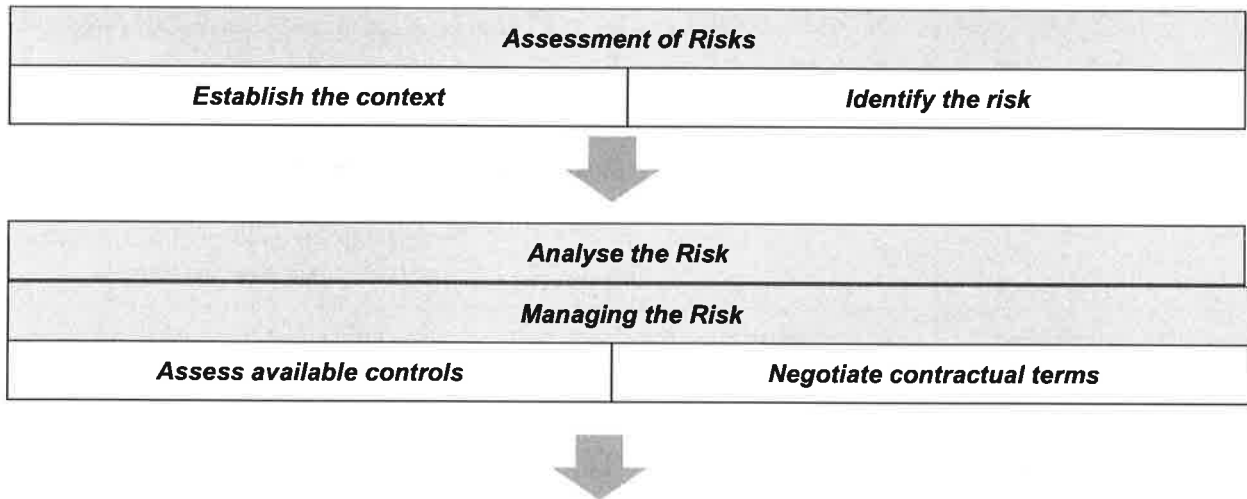


Contract Review Guidelines

(The Guidelines below are not to be intended to be legal advice and Rotarians should refer specific legal questions to Legal Advisors)

Contracts come in many forms for example, applications to use public space or the hiring of facilities which contain warranties and indemnities. As a general rule, the party that is best placed to control the risk should take responsibility for managing the risk therefore the Rotarian needs to understand the likely types of liability that may be associated with an activity.



After taking a risk assessment Rotarians will be in a better position to decide whether they manage the risks of the proposed activity.

Indemnities

Where a contract does not allocate liability between the parties, each party's liability will be determined at general law on the facts of each event. To provide greater certainty and/or to shift liability that may arise upon an event occurring, the parties may agree to contractually allocate liability between themselves.

A party may seek to have the benefit of an indemnity to ensure that any damage they suffer is recoverable.

An indemnity is a risk transference mechanism, where a party agrees to accept liability for losses or damages

To understand the particular meaning of an indemnity requires both an understanding of the nature of the indemnity and applying its wording to the particular facts and terms of the contract some of which are below:

Contract Requirement	Explanation	Recommendations
Hold Harmless	Is an agreement not to claim against or pursue another party for loss which might be incurred in the future in relation to the contract	Recommend that you negotiate the removal of any clause that limits or prevents your right to seek recovery against the other party. Some insurance policies will not respond where you have waived or limited an Insurer's right to seek recovery against a third party
Intentional or wilful, wrongful acts	Insurance provides for fortuitous acts rather than for deliberate and wrongful acts.	Liability policies don't provide cover for wilful or intentional acts. They are negligence-based policies. If you cannot negotiate the removal of this condition, you will in fact be uninsured.
Waiver of Subrogation	Is an agreement from the insurer that they will waive their rights to recovery from third parties under contract following a loss.	Waiver of subrogation is not permitted under Rotary's Public Liability policy.
Named Insured	Adding a third party as a named insured essentially has most of the same rights and obligation under the policy as the policy holder (Rotary).	Requests to include other parties as a named insured should be resisted. If the condition is non-negotiable the third party can be noted as "interested party" for Their Respective Rights and Interests that relate to the specific event or activity.

Note:

Commonly Local or State government use multiple and versions of the "standard" application forms and Rotary have been successful in obtaining a reasonable outcome for both parties always remember the other party to the request should have their own insurance and responsible for their actions.

When applying for the use of a public space/facility or interaction with a local/state government we recommend that the very first thing Rotary does is to provide a Public Liability Insurance Certificate of Currencies.